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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

THOMAS M. GOULD
CLERK U.S. DISTRICT COURT

WD OF MEMPHIS)
MARK BAGWELL)
Plaintiff,)
v.)
MEMPHIS-SHELBY COUNTY)
AIRPORT AUTHORITY, LARRY COX)
And MIKE HILL,)
Defendants.)

Civil Action No. 04-2576-MJP
MOTION DENIED
for the Reason
cited in Defendants
memo.
J.P. McCall
JON PHIPPS McCALLA
U.S. DISTRICT JUDGE
Sep. 13, 2005
DATE

**MOTION FOR
VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

COMES NOW, the Plaintiff, Mark Bagwell, by and though the undersigned counsel, and moves the Court to dismiss the cause of action without prejudice pursuant to *Federal Rules of Civil Procedure 41(a)(2)*, and would state the following:

1. On July 28, 2004, Plaintiff Bagwell originally filed his complaint pursuant to 28 U.S.C. §1331 charging Defendant Memphis Shelby County Airport Authority (“MSCAA”), with violation of the *Fair Labor Standards Act* (“FLSA”) codified in 29 U.S.C.A. §207 and §215. Plaintiff’s complaint further charged Defendants Larry Cox and Mike Hill, in their official and individual capacities, with deprivation of Plaintiff’s right and privileges in violation of 42 U.S.C.A. §1983, which Plaintiff later conceded.
2. Plaintiff Bagwell’s original complaint included state law claims, by way of the Court’s supplemental jurisdiction pursuant to 28 U.S.C. §1337, charging Defendant Larry Cox with Tennessee common law claim for negligent supervision and Defendant Mike Hill with infliction of emotional distress under Tennessee common law.

3. On March 30, 2005, this Court granted Plaintiff Bagwell motion to supplement his pleading for charges against Defendants in violation of Tennessee common law for retaliatory discharge against public policy and unlawful discharge in violation of *TCA §50-1-304*.
4. The state law claims substantially predominate over the claims in which this Court has original jurisdiction.
5. State court have concurrent jurisdiction over the federal question claims in this case.
6. Plaintiff intends to immediately file his cause of action in Circuit Court of Shelby County, Tennessee.
7. Dismissal of this action does not cause the Defendants to suffer "plain legal prejudice".
8. Based on the foregoing, as well as the arguments set forth in the attached *Memorandum in Support*, the Plaintiff respectfully request that his Motion for Voluntary Dismissal be granted without prejudice.
9. This Motion is accompanied by a *Memorandum in Support, Certificate of Consultation* and proposed *Order*.

Respectively submitted,
This 27th day of July, 2005.

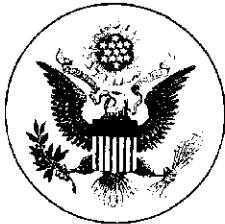

Dwight G. McQuirter, #022929
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Phone: 901-452-0086

CERTIFICATION OF SERVICE

I certify that a true and exact copy of the foregoing has been mailed on 27th day of July, 2005, by regular mail, postage paid, to:

Todd P. Photopolus, Attorney for Defendants
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
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Dwight G. McQuirter,



Notice of Distribution

This notice confirms a copy of the document docketed as number 66 in case 2:04-CV-02576 was distributed by fax, mail, or direct printing on September 15, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT